

# Singapore's Jurisprudence of Political Defamation and its triple-whammy impact on Political Speech

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Singapore's governing People's Action Party (PAP) leadership has always been sensitive towards political criticism. Singapore has a highly sophisticated legal framework<sup>1</sup> that imposes close and strict regulation on the local press and media system.<sup>2</sup> The foreign media is also subject to considerable political control.<sup>3</sup> Informal "out-of-bounds (OB) markers" had been mentioned and reported in the local press, in an attempt to give some clarity to the boundary of what the Singapore political leadership considered to be legitimate political criticism.<sup>4</sup>

There have been consistent criticisms that the frequent use of defamation actions by the Singapore political leadership against opposition leaders and newspapers has the effect of silencing political dissent from within or without. It has been argued

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<sup>1</sup>See C. George, *Calibrated coercion and the maintenance of hegemony in Singapore* (September 2005) Asia Research Institute Working Paper Series No.48. For a more extensive account, see F. Seow, *The Media Enthralled: Singapore Revisited* (Lynne Rienner Publishers, 1994).

<sup>2</sup>See Article 19, "Freedom of Expression and the Media in Singapore" (December 2005), p.6; see also [http://presspedia.journalism.sg/doku.php?id=mediacorp\\_press](http://presspedia.journalism.sg/doku.php?id=mediacorp_press) [Accessed May 24, 2008].

<sup>3</sup>Besides the threat and deterrent of defamation actions see, e.g. "Rules for broadcasters on politics here", *The Straits Times*, April 20, 2001. Under the Newspaper and Printing Presses Act (Cap. 206) and the Broadcasting Act (Cap. 28), the government is empowered to gazette publications or channels to restrict their circulation and impose financial penalties. Gazetting had been applied on different occasions to news magazines, such as *Time*, *Asia Wall Street Journal*, *Far Eastern Economic Review* and *International Herald Tribune*. Section 24(1) of the Newspapers and Printing Presses Act (Cap. 206) empowers the Minister to "declare any newspaper published outside Singapore to be a newspaper engaging in the domestic politics of Singapore".

<sup>4</sup>See, e.g. "Only those elected can set OB markers", *The Straits Times*, February 3, 1995.

that this trend of political defamation actions is a violation of the fundamental constitutional right to freely hold and peacefully express one's political opinions,<sup>5</sup> and that it amounts to severe restrictions on freedom of expression that cannot be justified under international standards,<sup>6</sup> seriously compromising the fundamental right to make political expression freely in public without fear of reprisal.<sup>7</sup>

Such use of defamation actions in Singapore can be traced to the 1970s.<sup>8</sup> The success rate is overwhelming — no leader of the PAP, the ruling political party since 1959, has ever lost a defamation action against an opposition leader in the Singapore courts,<sup>9</sup> and no foreign publisher has ever successfully defended a defamation action brought by a governing Singapore political leader in Singapore courts.<sup>10</sup> Very heavy awards of damages have been made. In a number of cases, as a result of failing to pay these hefty damages,<sup>11</sup> enforcement proceedings were taken out, resulting in highly publicised successful bankruptcy proceedings against certain prominent opposition leaders.<sup>12</sup> This has in turn attracted criticism that it constituted an abuse of the

<sup>5</sup>See, e.g. Amnesty International, "Singapore: Defamation suits threaten Chee Soon Juan and erode freedom of expression" (ASA 36/010/2001) (November 2, 2001).

<sup>6</sup>See, e.g. Amnesty International, "Singapore: J B Jeyaretnam — the use of defamation suits for political purposes" (ASA 36/004/1997) (October 15, 1997), at <http://www.amnesty.org/en/library/info/ASA36/004/1997> [Accessed May 24, 2008].

<sup>7</sup>Lawyers' Rights Watch Canada expressed concerns that, "[t]he right to express oneself freely in public without fear of reprisal has been severely compromised in Singapore" in "Singapore's High Court Denied Trial to Opposition Leader in Defamation Case" *The Canadian Press*, April 4, 2003, 2003 WL 18252432.

<sup>8</sup>This practice can be traced to the 1970s; see, e.g. *Jeyaretnam JB v Lee Kuan Yew* [1978–79] Sing. L.R. 197; [1979] SGCA 13; [1979] 2 M.L.J. 282.

<sup>9</sup>See, e.g. E. Ellis "Singapore authorities use libel laws to silence critics", *The Australian*, September 26, 2002, <http://www.singapore-window.org/sw02/020926au.htm> [Accessed May 24, 2008]; S. Littlemore Q.C., *Report to the International Commission of Jurists Geneva Switzerland on a Defamation Trial in the High Court of Singapore Goh Chok Tong v JB Jeyaretnam August 18–22 1997* (October 1, 1997).

<sup>10</sup>See, e.g. Ellis "Singapore authorities use libel law to silence critics", *The Australian*, September 26, 2002.

<sup>11</sup>See, e.g. G. Davidson and H. Rubin, *Defamation in Singapore: Report to LRWC in the Matter of Joshua Benjamin Jeyaretnam and the two appeals in the Court of Appeal of the Republic of Singapore*.

<sup>12</sup>See *Re Jeyaretnam Joshua Benjamin* [2001] 2 Sing. L.R. 286, [2001] SGHC 46 per Tan J.; *Jeyaretnam Joshua Benjamin v Indra Krishnan* [2001] SGHC 215, [2001] 3 Sing. L.R. 525, [2001] 1 SGCA 52 per Chao J.A.; "J B Jeyaretnam — the use of defamation suits for political purposes", October 14, 1997: <http://www.amnestyusa.org/other-countries/singapore/page.do?id=1011233&n1=3&n2=30&n3=983> [Accessed May 24, 2008]; *Re Jeyaretnam Joshua Benjamin Ex p. Indra Krishnan (No.2)* [2004] 3 Sing. L.R. 133, [2004] SGHC 106 per Choo J.; *Jeyaretnam Joshua Benjamin v Indra Krishnan* [2005] 1 Sing. L.R. 395, [2004] SGCA 55 per Chao J.A.; *Re Jeyaretnam Joshua Benjamin Ex p. Indra Krishnan* [2007] SGHC 14 per Tan J.; *Att Gen v Chee Soon Juan* [2006] 2 Sing. L.R. 650, [2006] SGHC 54 at [2]; *Lee Hsien Loong v Singapore Democratic Party* [2007] 1 Sing. L.R. 675, [2006] SGHC 220.

bankruptcy law for political purposes.<sup>13</sup> On the other hand, the few defamation actions commenced and proceeded with<sup>14</sup> by the opposition ended in dismissals of their claims.<sup>15</sup>

It has been argued that this produces a chilling effect. It engenders a general sense of intimidation and a climate of self-censorship in Singapore. The political leadership's response to this is equally robust, at times branding such criticisms as political interference in domestic affairs,<sup>16</sup> justifying these political defamation actions as part of Singapore's unique political culture that maintains a high standard of truth and honesty in politics.<sup>17</sup>

This analysis seeks to explore how the Singapore judiciary has, over the years, turned the "public figure doctrine" on its head, achieving the opposite of what the doctrine is meant to do in other jurisdictions. It examines how Singapore courts made their reasoning in their findings that such statements were defamatory. This analysis also reflects on the allegations of how these harsh sanctions handed out by Singapore courts for statements found to be defamatory have had a pernicious effect on the tightly-controlled political space, and the potential for political pluralism, in Singapore.

## **Permissible derogation from constitutional right of free speech**

Although the fundamental right of free speech is expressly guaranteed under Art. 14(1)(a) of the Constitution, it is restricted considerably by eight "necessary or ex-

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<sup>13</sup>See, e.g. K. Bryan and H. Rubin, *The Misuse of Bankruptcy Law in Singapore: An Analysis of the Matter of Re Joshua Benjamin Jeyaretnam*, ex parte Indra Krishnan; <http://www.ipu.org/conf-e/107.pdf> [Accessed May 24, 2008].

<sup>14</sup>This does not take into account possible cases that might have been settled out of court.

<sup>15</sup>See *Jeyaretnam JB v Goh Chok Tong* [1984–85] Sing. L.R. 516, [1985] 1 M.L.J. 334 per Thean J. This dismissal was affirmed on appeal: Court of Appeal [1986] Sing. L.R. 106, [1986] SGCA 14, [1987] 1 M.L.R. 176 per Lai J., and the Privy Council [1989] Sing. L.R. 4, [1989] 3 M.L.J. 1 per Lord Ackner; the defendant was then the Minister for Defence. See also *Workers' Party v Tay Boon Too* [1972–74] Sing. L.R. 621, [1974] SGHC 18 per Chua J.; the defendant was a PAP member.

<sup>16</sup>e.g. in Singapore's *Parliamentary Debates*, Vol.68, col.1973 (April 20, 1998), Minister Professor S. Jayakumar argued that defamation actions were an "established part of Singapore's political culture that seeks to maintain a high standard of truth and honesty in politics", essentially constituting a vindication before the electorate.

<sup>17</sup>For an in-depth and very comprehensive survey, see Thio Li-ann " 'Pragmatism and Realism Do Not Mean Abdication': A Critical and Empirical Inquiry Into Singapore's Engagement with International Human Rights Law" (2004) 8 *Singapore Yearbook of International Law* 41.

pedient” restrictions. Provision against defamation, contained in the Defamation Act,<sup>18</sup> is one of the restrictions on free speech.

The Singapore judiciary has consistently rejected arguments that defamation actions could constitute unlawful interference with the fundamental right of free speech under Art.14 of the Constitution.

The High Court in *Lee Kuan Yew v Jeyaretnam JB (No. 1)*<sup>19</sup> adopted the approach that the common law rules of defamation were a justifiable balance between free speech and the protection of reputation<sup>20</sup>:

By article 14, the framers of our Constitution had after all deliberate considerations chosen the policy of balancing freedom of speech and expression against certain other individual rights, including not least the protection of reputation. ... the common law evolving certain well known defences, as modified by statute, for defendants in defamation cases, and directed to the intent and purpose that freedom of speech must end where individual rights begin.

It seemed that implicit in such an approach was the recognition of the need to justify the law that Parliament has provided, and hence, of possible judicial review where it is not justifiable.<sup>21</sup>

However, in *Jeyaretnam Joshua Benjamin v Lee Kuan Yew*,<sup>22</sup> the Court of Appeal, when confronted with this issue, adopted a more technical approach — the fact that Parliament has provided for the common law of defamation constitutes a complete answer to the argument that the utterance of the words concerned was in exercise of the constitutional right of free speech.<sup>23</sup> In its reasoning, the Court of Appeal failed to go into the question of whether Parliament had acted justifiably in doing so.<sup>24</sup>

In a subsequent decision, *Jeyaretnam Joshua Benjamin v Lee Kuan Yew*,<sup>25</sup> the Court of Appeal made it clear that the right to free speech was subject, *inter alia*, to the common law of defamation as modified by the Defamation Act. While one may have expected more detailed analysis and fuller reasons, the Court of Appeal resorted to a series of unargued assertions:<sup>26</sup>

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<sup>18</sup>(Cap. 75) 1985 Rev. Ed.

<sup>19</sup>[1990] 3 M.L.J. 322; [1990] Sing. L.R. 688; [1990] SGHC 51.

<sup>20</sup>[1990] 3 M.L.J. 322; [1990] Sing. L.R. 688; [1990] SGHC 51 at [46] per Lai J.

<sup>21</sup>[1990] Sing. L.R. 688 at [44] and [46].

<sup>22</sup>[1990] 2 M.L.J. 65,

<sup>23</sup>[1990] 2 M.L.J. 65 at 65 per Wee C.J..

<sup>24</sup>A similar approach was adopted by the High Court in *Att Gen v Wain (No. 1)* [1991] 2 M.L.J. 525; [1991] Sing. L.R. 383 per Sinnathuray J.

<sup>25</sup>[1992] 2 Sing. L.R. 310; [1992] SGCA 27.

<sup>26</sup>[1992] 2 Sing. L.R. 310 at 332/[61] per Thean J.

An absolute or unrestricted right of free speech would result in persons recklessly maligning others with impunity and the exercise of such a right would do the public more harm than good. Every person has a right to reputation and that right ought to be protected by law. Accordingly, a balance has to be maintained between the right of free speech on the one hand, and the right to protection of reputation on the other. The law of defamation protects such right to reputation, and, as we have shown, it was undoubtedly intended by the framers of our Constitution that the right of free speech should be subject to such law.<sup>27</sup>

The Singapore judiciary has thus progressively hardened its position in upholding the constitutionality of the common law of defamation, but for insufficiently articulated reasons.

The refusal to carry out a proper balancing exercise between free speech and the protection of individual reputation is surprising in the context of a defamation regime where the defendant bears the burden of proving the truth of what has been said, and in which the intention of the speaker is irrelevant to liability.<sup>28</sup>

It is also surprising that the courts appear to have no problems with a provision in the Defamation Act which severely restricts the freedom to discuss questions in issue in an election by or on behalf of a candidate by precluding qualified privilege as a defence for electoral candidates.<sup>29</sup> Extending qualified privilege in this context will facilitate the airing of public concerns in the election process by removing the fear of defamation proceedings for inadvertent misstatements. It seems that the public policy in Singapore is one that values the protection of reputation so much more than the need to provide an atmosphere for free discourse in the electoral process.

## Public figure doctrine

In *Jeyaretnam Joshua Benjamin v Lee Kuan Yew*,<sup>30</sup> the public figure doctrine used in the United States of America — which requires that politicians or public figures

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<sup>27</sup> See the repetition of such unargued assertions in *Tang Liang Hong v Lee Kuan Yew* [1998] 1 Sing. L.R. 97 at [117].

<sup>28</sup> The US doctrine in *New York Times Co v Sullivan* 376 U.S. 254 (1964) at 279 per Brennan J. was rejected by the High Court in *Lee Kuan Yew v JB Jeyaretnam (No. 1)* [1990] 3 M.L.J. 322; [1990] Sing. L.R. 688; [1990] SGHC 51 at [46] and [51] per Lai J.

<sup>29</sup> Section 14 of the Defamation Act (amended by Act 11/1991, vide S527/1991, with effect from November 30, 1991). See, c.g. *Lee Kuan Yew v Jeyaretnam JB* [1978–79] Sing. L.R. 429; [1979] SGHC 35 at [48] per Chua J.; *Jeyaretnam Joshua Benjamin v Lee Kuan Yew* [1992] 2 Sing. L.R. 310; [1992] SGCA 27 at [72] per Thean J.

<sup>30</sup> [1992] 2 Sing. L.R. 310; [1992] SGCA 27.

be more tolerant of criticism to serve the interests of free speech in a democratic society — was specifically rejected by the Court of Appeal, resulting in according equal protection to politicians and private citizens alike in Singapore.

In dismissing the public figure doctrine, instead of undertaking a more searching analysis of the essence and confines of the fundamental right of free speech under the Constitution, the Court of Appeal decided on a semantic approach, comparing the wording of Art. 10 of the European Convention on Human Rights and Art.14 of the Constitution,<sup>31</sup> exhibiting a highly literalist approach towards constitutional interpretation.<sup>32</sup>

Such an approach is in line with the general trend of important court judgments in Singapore involving interpretation of other rights. Whenever arguments are made for the adoption of an interpretation that would have the effect of broadening individual liberties or political rights, Singapore courts have consistently retreated to the black letter of the text of the law, opting for extremely formalistic interpretations which focus on apparently minor textual distinctions.<sup>33</sup>

In a subsequent judgment,<sup>34</sup> the Court of Appeal hardened its position in dismissing the public figure doctrine.<sup>35</sup> In dismissing the public official doctrine in both these judgments, the Court of Appeal was unmoved by the importance of free speech in a democratic society.<sup>36</sup>

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<sup>31</sup>[1992] 2 Sing. L.R. 310; [1992] SGCA 27 at [56] per Thean J.

<sup>32</sup>This highly literalist approach was affirmed, and relied upon, to dismiss the need to engage in a searching analysis of *Reynolds v Times Newspapers* [2001] 2 A.C. 127: *Lee Hsien Loong v Singapore Democratic Party* [2007] 1 Sing. L.R. 675, [2006] SGHC 220 at [76] per B. Ang J. The judge also dismissed the need for a more meaningful analysis of the principles and essence obtained in *Lange v Australian Broadcasting Corporation* (1997) 145 A.L.R. 96 and *Lange v Atkinson* [2000] 3 N.Z.L.R. 385: *Lee Hsien Loong v Singapore Democratic Party* [2007] 1 Sing. L.R. 675, [2006] SGHC 220 at [81] per B. Ang J.

<sup>33</sup>See, e.g. *Colin Chan v Public Prosecutor* [1994] 3 Sing. L.R. 662 per Yong C.J.; *Chee Siok Chin v Minister for Home Affairs* [2005] SGHC 216 per Rajah J; *Rajeevan Edakalavan v Public Prosecutor* [1998] 1 Sing. L.R. 815 per Yong C.J.; *Lee Hsien Loong v Singapore Democratic Party* [2007] 1 Sing. L.R. 675, [2006] SGHC 220 at [76] per B. Ang J.

<sup>34</sup>*Tang Liang Hong v Lee Kuan Yew* [1998] 1 Sing. L.R. 97; [1997] SGCA 52 at [117]–[118] per Thean J.A.

<sup>35</sup>See affirmation of the position in *Lee Hsien Loong v Singapore Democratic Party* [2007] 1 Sing. L.R. 675; [2006] SGHC 220 at [36] per B. Ang J.

<sup>36</sup>See also [1992] 2 Sing. L.R. 310; [1992] SGCA 27 at [61]–[62]; [1998] 1 Sing. L.R. 97; [1997] SGCA 52 at [113]–[114].

## Judicial approach to the determination of defamatory statements

An analysis of the relevant judgments in political defamation actions points to a reluctance on the part of the Singapore judiciary to demonstrate sufficient reasoning in its decisions. In particular, the judgments demonstrate insufficient apparent effort in considering the possibility of other non-defamatory constructions of the statement complained of.

In *Lee Kuan Yew v Jeyaretnam JB*,<sup>37</sup> in a defamation action against an opposition politician relating to words spoken at an election rally,<sup>38</sup> the trial judge merely excerpted the relevant paragraph of the plaintiff's statement of claim,<sup>39</sup> then summarised the submission of the defendant,<sup>40</sup> before coming to the determination that the words spoken were defamatory.<sup>41</sup> The judgment does not indicate why the trial judge rejected the defendant's submission.

In *Jeyaretnam v Lee Kuan Yew*,<sup>42</sup> the plaintiff commenced a case for slander, arguing that what the defendant said during an election rally was understood to mean the plaintiff had aided and abetted a former Cabinet Minister to commit suicide. The Court of Appeal affirmed the trial judge's finding of slander and his award of S\$260,000 of damages.<sup>43</sup> The Court of Appeal found that because the defendant had questioned the honesty of the government in an earlier part of his speech,<sup>44</sup> an ordinary listener could understand his subsequent questions to imply that the government attempted to cover up the suicide.<sup>45</sup>

It is not clear in the judgment how the trial judge and the Court of Appeal came to that conclusion.<sup>46</sup> The trial judge merely summarised the submissions by counsel for the plaintiff and the defendant,<sup>47</sup> before coming to an abrupt conclusion, without much of an explanation, by "accept[ing entirely] the force of the submission of

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<sup>37</sup>[1978–79] Sing. L.R. 429; [1979] SGHC 35 per Chua J.

<sup>38</sup>[1978–79] Sing. L.R. 429; [1979] SGHC 35 at [10].

<sup>39</sup>[1978–79] Sing. L.R. 429; [1979] SGHC 35 at [21] and [23].

<sup>40</sup>[1978–79] Sing. L.R. 429; [1979] SGHC 35 at [23]–[26].

<sup>41</sup>[1978–79] Sing. L.R. 429; [1979] SGHC 35 at [43]–[45].

<sup>42</sup>[1992] 2 Sing. L.R. 310 at 314; [1992] SGCA 27 at [11] per Thean J.

<sup>43</sup>[1990] 3 M.L.J. 322; [1990] Sing. L.R. 688 at [61] per Lai J.

<sup>44</sup>See [1992] 2 Sing. L.R. 310; [1992] SGCA 2 at [10] and [27].

<sup>45</sup>[1992] 2 Sing. L.R. 310, [1992] SGCA 27 at [10] and [32]; see also [1990] 3 M.L.J. 322, [1990] Sing. L.R. 688 at [34] per Lai J.

<sup>46</sup>[1992] 2 Sing. L.R. 310; [1992] SGCA 27 at [32]; [1990] 3 M.L.J. 322; [1990] Sing. L.R. 688 at [34].

<sup>47</sup>[1990] 3 M.L.J. 322; [1990] Sing. L.R. 688 at [32]–[33].

[counsel for the plaintiff]”.<sup>48</sup> The Court of Appeal came to a similar conclusion,<sup>49</sup> before making the finding,<sup>50</sup> without making clear in the judgment the “obviousness” of the conclusion. Neither the trial judge nor the Court of Appeal made any apparent attempt at considering whether the defendant’s words were capable of any other meaning.

In *Goh Chok Tong v Tang Liang Hong*,<sup>51</sup> the trial judge simply ruled that, “[i]n my judgment what I have set out is the single and the right meaning of the utterances and the article”.<sup>52</sup> The judgment reveals neither explanation nor reasoning concerning how the trial judge arrived at his conclusion. On appeal, the Court of Appeal merely agreed with the finding of the trial judge, simply stating that “the words complained of did bear some of the meanings averred by the plaintiff”.<sup>53</sup> Again, there was no apparent attempt to consider whether or not the defendant’s words were capable of other non-defamatory meanings.

In *Goh Chok Tong v Chee Soon Juan*<sup>54</sup> and *Lee Kuan Yew v Chee Soon Juan*,<sup>55</sup> the plaintiffs commenced defamation actions, arguing that what the defendant said during an election rally was understood to mean the plaintiff’s were dishonest and unfit for office.<sup>56</sup> The High Court, in dismissing the defendant’s appeal against the interlocutory judgment with damages granted by the senior assistant registrar, merely adopted the finding by the senior assistant registrar that had held that the impugned words uttered by the defendant were defamatory of the plaintiffs.<sup>57</sup> There was no analysis in the decision of the senior assistant registrar in the finding of imputation of dishonesty.<sup>58</sup> What is disturbing is that the High Court simply came to the conclusion that the defendant’s statements imputed dishonesty against the

<sup>48</sup> [1990] 3 M.L.J. 322; [1990] Sing. L.R. 688 at [34].

<sup>49</sup> [1992] 2 Sing. L.R. 310; [1992] SGCA 27 at [29].

<sup>50</sup> [1992] 2 Sing. L.R. 310; [1992] SGCA 27 at [32].

<sup>51</sup> [1997] 2 Sing. L.R. 641; [1997] SGHC 104 per Lai J.

<sup>52</sup> [1997] 2 Sing. L.R. 641; [1997] SGHC 104 at [63.2], [64].

<sup>53</sup> [1998] 1 Sing. L.R. 97; [1997] SGCA 52 at [87].

<sup>54</sup> [2003] 3 Sing. L.R. 32; [2003] SGHC 79.

<sup>55</sup> [2003] 3 Sing. L.R. 8; [2003] SGHC 78.

<sup>56</sup> See [2003] 3 Sing. L.R. 32, [2003] SGHC 79 at [12]; [2003] 3 Sing. L.R. 8, [2003] SGHC 78 at [10]. The plaintiffs successfully obtained summary judgment against the defendant: see [2003] 3 Sing. L.R. 32, [2003] SGHC 79 at [15]; [2003] 3 Sing. L.R. 8, [2003] SGHC 78 at [13]. The defendant was denied applications by the court to have foreign lawyers admitted to conduct his defence: *Re Littlemore Stuart Q.C.* [2002] 1 Sing. L.R. 296 at 297, [2002] SGHC 16 at [14] per Lai J.; *Re Nicholas William Henric Q.C.* [2002] 2 Sing. L.R. 296 at 307, [2002] SGHC 74.

<sup>57</sup> [2003] 3 Sing. L.R. 8, [2003] SGHC 78 at [55] per Rubin J.; [2003] 3 Sing. L.R. 32, [2003] SGHC 79 at [56] per Rubin J.

<sup>58</sup> [2003] 3 Sing. L.R. 8, [2003] SGHC 78 at [55]; [2003] 3 Sing. L.R. 32, [2003] SGHC 79 at [56].

plaintiff.<sup>59</sup> Once again, the High Court showed that it failed to consider whether the defendant's words were capable of any other meaning, and was only too ready to accept the meaning argued by counsel for the plaintiff.

An analysis of the cases reveals, in my opinion, inadequate reasoning on the part of the Singapore judiciary, and more disturbingly, failure<sup>60</sup> to see if there might be any other possible non-defamatory meaning to the words complained of. This may help fuel the criticism that in Singapore the law of defamation has been used to curb political dissent in an overly extensive manner.

## Crippling damages and political hierarchy

In a number of cases, as a result of failure to pay the crippling damages, enforcement proceedings had been taken out, resulting in highly publicised successful bankruptcy proceedings against certain prominent opposition leaders, leading to their ineligibility to contest parliamentary elections.<sup>61</sup> This has led to persistent criticisms from abroad that substantial damages have a “chilling effect” on the freedom of expression and political debate.<sup>62</sup> The Singapore judiciary has remained unmoved.<sup>63</sup>

The judgments reviewed here seem to show that the governing political leadership has been awarded damages by Singapore courts many times higher than the damages awarded in actions involving others.<sup>64</sup>

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<sup>59</sup> [2003] 3 Sing. L.R. 8; [2003] SGHC 78 at [28].

<sup>60</sup> See also *Lee Hsien Loong v Singapore Democratic Party* [2007] 1 Sing L.R. 675; [2006] SGHC 220 at [57] per B. Ang J.

<sup>61</sup> Art. 45(1)(b) of the Constitution.

<sup>62</sup> See, e.g. G. Davidson and H. Rubin, *Defamation in Singapore: Report to LRWC in the Matter of Joshua Benjamin Jeyaretnam and the two appeals in the Court of Appeal of the Republic of Singapore*; K. Bryan and H. Rubin, *The Misuse of Bankruptcy Law in Singapore: An Analysis of the Matter of Re Joshua Benjamin Jeyarethan, ex parte Indra Krishnan*, Amnesty International, “Singapore: Defamation suits threaten Chee Soon Juan and erode freedom of expression” (ASA 36/010/2001) (November 2, 2001); Amnesty International, “Singapore: JB Jeyaretnam — the use of defamation suits for political purposes” (ASA 36/04/97) (October 15, 1997).

<sup>63</sup> See, e.g. *Tang Liang Hong v Lee Kuan Yew* [1998] 1 Sing L.R. 97; [1997] SGCA 52 at [113]–[114], [118]–[119] per Thean J.A.

<sup>64</sup> See further S. Littlemore Q.C., *Report to the International Commission of Jurists Geneva Switzerland on a Defamation Trial in the High Court of Singapore Goh Chok Tong v JB Jeyaretnam August 18–22 1997* (International Commission of Jurists, October 1, 1997). Littlemore Q.C., a former International Commission of Jurists rapporteur, had had his application for admission under the Legal Profession Act (Cap. 161), to appear for Chee Soon Juan in two defamation suits, denied because his prior disparagement of the Singapore judiciary indicated a lack of “decency, measure and maturity”: *Re Littlemore Stuart Q.C.* [2002] 1 Sing. L.R. 296, [2002] SGHC 16 at [14] per Lai J.; see also E. Ellis, “Singapore

In 1979, in *Lee Kuan Yew v Jeyaretnam JB*,<sup>65</sup> the sum of S\$130,000 was awarded.<sup>66</sup> In 1988, in *Lee Kuan Yew v Seow Khee Leng*,<sup>67</sup> the sum of S\$250,000 was awarded. In 1989, in *Lee Kuan Yew v Davies*,<sup>68</sup> the sum of S\$230,000 was awarded. In 1990, in *Lee Kuan Yew v Jeyaretnam JB (No. 1)*,<sup>69</sup> the sum of S\$260,000 was awarded.<sup>70</sup> In 1995, in *Lee Kuan Yew v Vinocur*,<sup>71</sup> the sums of \$300,000<sup>72</sup> (for the first suit) and \$350,000<sup>73</sup> (for the second suit) were awarded.<sup>74</sup> In 1997, in *Lee Kuan Yew v Tang Liang Hong*,<sup>75</sup> a total sum of about S\$8 million was awarded by the High Court.<sup>76</sup> In the same year, in *Goh Chok Tong v Jeyaretnam Joshua Benjamin*,<sup>77</sup> S\$20,000 was awarded.<sup>78</sup> This was increased on appeal to S\$100,000 and costs,<sup>79</sup> the Court of Appeal having found that the High Court had failed to give sufficient weight to the aggravation caused by the accusations by defence counsel<sup>80</sup> against the plaintiff during cross-examination in the trial, which the Court of Appeal found “amounted to an attack on his integrity, character and suitability for his position as Prime Minister of Singapore”.<sup>81</sup> In 2005, in *Lee Kuan Yew v Chee Soon Juan (No.2)*<sup>82</sup> and *Goh Chok Tong v Chee Soon Juan (No.2)*,<sup>83</sup> the sums of S\$200,000 and S\$300,000 were awarded respectively.

As a contrast, considerably smaller damages awards have been made by the Singapore judiciary in cases involving non-governing political leaders. For instance,

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Authorities Use Libel Laws to Silence Critics”, *The Australian*, September 26, 2002.

<sup>65</sup>[1979] 1 M.L.J. 281; [1978–79] Sing. L.R. 429; [1979] SGHC 35 at [44]–[45] and [73] per Chua J.

<sup>66</sup>[1978–79] Sing. L.R. 197 [1979] SGCA 13 at [20] per Wee C.J.; [1982–83] Sing. L.R. 1, [1982] SGPC 1 at [26] per Lord Ackner.

<sup>67</sup>[1989] 1 M.L.J. 172; [1988] Sing. L.R. 832; [1988] SGHC 78 at [23]–[24] and [41] per Chua J.

<sup>68</sup>[1989] Sing. L.R. 1063; [1989] SGHC 111 at [38] and [137] per Thean J.

<sup>69</sup>[1990] 3 M.L.J. 322; [1990] Sing. L.R. 688; [1990] SGHC 51 at [34] and [61] per Lai J.

<sup>70</sup>[1992] 2 Sing. L.R. 310; [1992] SGCA 27 at [87] per Thean J.

<sup>71</sup>[1995] 3 Sing. L.R. 477; [1995] SGHC 201 at [13] and [67] per Goh J.

<sup>72</sup>To each of the first and second plaintiffs, namely, Lee Kuan Yew and Lee Hsien Loong.

<sup>73</sup>To the third plaintiff, Goh Chok Tong.

<sup>74</sup>*Lee Kuan Yew v Vinocur* [1996] 2 Sing. L.R. 542; [1996] SGHC 73 at [29] per Rajendran J.

<sup>75</sup>[1997] 3 Sing. L.R. 91; [1997] SGHC 138 at [112] per Chao J.

<sup>76</sup>For the 13 separate actions involving 11 plaintiffs, all of them comprising the political leadership of Singapore.

<sup>77</sup>[1998] 1 Sing. L.R. 547; [1997] SGHC 243 at [200] per Rajendran J.

<sup>78</sup>The trial judge took into account “the fact that the defendant acted with reckless disregard to the consequences of his actions and taking into account the conduct of his defence at trial”: [1998] 1 Sing. L.R. 547; [1997] SGHC 243 at [200].

<sup>79</sup>[1998] 3 Sing. L.R. 337; [1998] 3 SGCA 42 at [59], [64] per Yong C.J.

<sup>80</sup>George Carman Q.C.

<sup>81</sup>[1998] 3 Sing. L.R. 337; [1998] 3 SGCA 42 at [56] per Yong C.J.

<sup>82</sup>[2005] 1 Sing. L.R. 552; [2005] SGHC 2 at [96] per Kan J.

<sup>83</sup>[2005] 1 Sing. L.R. 573; [2005] SGHC 3 at [72] per Kan J.

in *Chiam See Tong v Ling How Doong*,<sup>84</sup> S\$120,000 was awarded. In *A Balakrishnan v Nirumalan K Pillay*,<sup>85</sup> awards of S\$25,000 and S\$30,000 were made.

An examination of the underlying rationales in the relevant judgments supporting the crippling damages awarded by the Singapore judiciary in cases involving the political leadership seems to reveal the following judicial reasoning.<sup>86</sup>

First, the rationales reflect that the essential element of vindication of the plaintiff's reputation in the eyes of the public before which he was defamed featured prominently in the determination of the quantum of awards. This indicates that determinative weight was placed by the Singapore judiciary on the public interest of maintaining the public reputation of public men, lest they be deterred, as sensitive honourable men, from entering politics, as well as ensuring that the public perception of their integrity would remain unaffected so as to protect the governing political leaders' effectiveness.<sup>87</sup>

Secondly, the rationales indicate that politicians had greater reputations to defend. The Singapore judiciary places a special emphasis on the official political positions occupied by government leaders in defamation actions. This has resulted in the application of a crude graduated formula — the higher the official political office or position involved, the higher the quantum of damages.<sup>88</sup> Damages in political defamation cases are not premised on the notion of depreciation in the value of the plaintiff's reputation but, rather, are viewed from the perspective of what amount would achieve the purpose of vindication.

Thirdly, the rationales indicate that the issue of the disproportionality these

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<sup>84</sup>[1997] 1 Sing. L.R. 648; [1996] SGHC 293 at [90] per Sinnathuray J.; the plaintiff was an opposition MP.

<sup>85</sup>[1999] 3 Sing. L.R. 22; [1999] SGCA 37 at [17], [49] per Thean J.A. The first and second appellants were a member and the Secretary-General of Workers' Party (opposition party) respectively.

<sup>86</sup>See, c.g. *Lee Kuan Yew v Tang Liang Hong* [1997] 3 Sing. L.R. 91, [1997] SGHC 138 per Chao J.; *Tang Liang Hong v Lee Kuan Yew* [1998] 1 Sing. L.R. 97, [1997] SGCA 52 per Thean J.A.

<sup>87</sup>See, e.g. *Goh Chok Tong v Chee Soon Juan (No.2)* [2005] 1 Sing. L.R. 573, [2005] SGHC 3 at [69] per Kan J.; *Lee Kuan Yew v Chee Soon Juan (No.2)* [2005] 1 Sing. L.R. 552, [2005] SGHC 2 at [93] per Kan J.

<sup>88</sup>See, e.g. *Lee Kuan Yew v Tang Liang Hong* [1997] 3 Sing. L.R. 91, [1997] SGHC 138 at [110] per Chao J. See a distinction between S\$300,000 for the Prime Minister and S\$200,000 for the Minister Mentor in *Goh Chok Tong v Chee Soon Juan (No.2)* [2005] 1 Sing. L.R. 573, [2005] SGHC 3 at [72]; *Lee Kuan Yew v Chee Soon Juan (No.2)* [2005] 1 Sing. L.R. 552, [2005] SGHC 2 at [96] per Kan J. See a distinction between an award of S\$350,000 for the Prime Minister and an award of S\$300,000 for the Senior Minister and the Deputy Prime Minister: *Lee Kuan Yew v Vinocur* [1995] 3 Sing. L.R. 477, [1995] SGHC 201 at [67] per Goh J. See also a distinction between an award of S\$150,000 to the Deputy Prime Minister and S\$130,000 to a Cabinet Minister in *Tang Liang Hong v Lee Kuan Yew* [1998] 1 Sing. L.R. 97, [1997] SGCA 52 at [189]; award of S\$120,000 to an opposition MP in *Chiam See Tong v Ling How Doong* [1997] 1 Sing. L.R. 648, [1996] SGHC 293 at [90].

crippling defamation awards bore to the awards in personal injury cases is not one that would hold the Singapore judiciary back.<sup>89</sup>

Fourthly, and most disturbingly, the rationales indicate that while the Singapore judiciary accorded politicians or public figures equal protection in terms of their reputational interests — vis-à-vis private citizens — when it comes to the quantum of damages, the “high standing” of certain politicians or public office holders has yielded aggravated damages in some of these decisions.<sup>90</sup>

The Singapore judiciary has managed to turn the public figure doctrine on its head. Compared to other jurisdictions subscribing to the public figure doctrine, the Singapore public figure is twice blessed — once, in enjoying the same protection as others when it comes to defamation liability, and twice, in the conferment of much higher damages — full marks for the protection of reputation, but entirely at the expense of the freedom of political speech, that apparently indispensable element of a democratic society.

It is thus not surprising that the crippling damages awarded in the defamation actions involving opposition critics have consistently led several international organisations to voice serious concerns that the use of defamation actions has resulted in seriously discouraging political dissent and criticism of government policies.<sup>91</sup>

## Political control

The past three decades of jurisprudence of political defamation from Singapore show a reluctance to appreciate the importance of achieving an appropriate balance between the societal interests in political speech and individual reputation. Singapore’s jurisprudence of political defamation has positioned itself at the far end of the spectrum — one that places primacy on very generous protection of individual reputation, at the cost of freedom of speech.

Arguably, the three major concerns listed above — that cause a serious imbalance

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<sup>89</sup>*Jeyaretnam JB v Lee Kuan Yew* [1979] 2 M.L.J. 282 at 285, [1978–79] Sing. L.R. 429, [1979] SGCA 13 at [19] per Wee C.J.; *Tang Liang Hong v Lee Kuan Yew* [1998] 1 Sing. L.R. 97, [1997] SGCA 52 at [124]–[127] per Thean J.A.

<sup>90</sup>*See, e.g. Lee Kuan Yew v Chee Soon Juan (No.2)* [2005] 1 Sing. L.R. 552, [2005] SGHC 2 at [94] per Kan J.; *Goh Chok Tong v Chee Soon Juan (No.2)* [2005] 1 Sing. L.R. 573, [2005] SGHC 3 at [70] per Kan J.; *Goh Chok Tong v Jeyaretnam Joshua Benjamin* [1998] 1 Sing. L.R. 547, [1997] SGHC 243 at [200] per Rajendran J.

<sup>91</sup>*See* Commission on Human Rights Resolution 2003/42, E/CN.4/2003/L.11/Add.4, Principle 15 of *Defining Defamation: Principles on Freedom of Expression and Protection of Reputation* (London: Article 19, June 2000); UN Doc. E/CN.4/2001/64 (February 13, 2001), para.48.

between the societal interests in political speech and individual reputation — are, in effect, a triple whammy on the freedom of speech.

It serves only to encourage the criticism that the law of defamation in Singapore has been used to curb political dissent in an overly extensive manner. This comes at a cost. As the political opposition leaders have borne the brunt of the defamation actions, such jurisprudence from Singapore courts has the potential to cause the political opposition and other critics to be overly cautious in public discourse.<sup>92</sup> It strikes undue fear amongst those who engage in public discourse and contributes to self-censorship in matters of the greatest public concern.

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<sup>92</sup>At times, even the threats of defamation actions alone prompted foreign media to apologise, pay damages and legal costs. See, *e.g.* Article 19, “Freedom of Expression and the Media in Singapore” (London: December 2005), pp.50–51; “Economist magazine apologies to PM”, *Reuters*, September 2, 2004; “Times and Post Cos. Bow to Mighty Singapore”, *Free Press*, October 1995, p.11.